HOW TO DEFEND YOURSELF

A Practical Legal Guide for Workers

NOTE.—*This guide is based on the law as it stands at the present day. Nowadays, however, a practice has grown of introducing changes in the law and the legal machinery merely by Ministerial decree: and therefore this guide must be read subject to such changes, for which a sharp lookout must be kept.*

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INTRODUCTORY

THIS pamphlet is intended as a guide for all workers who may come into conflict with the authorities as a result of their political or trade union activities. Its object is to describe the main legal forms of attack on political workers, and to provide assistance for those who are brought up against the machinery of the law, so that they may know how best to conduct themselves in the face of these attacks and, if necessary, how to defend themselves in the Courts. A worker armed with this knowledge may also be able to defeat any attempts to overreach him, to put something across him. The watchword of a politically active worker is to be vigilant and prepared.

It must be remembered, however, that charges such as " obstruction," " breach of the peace," " insulting words or behaviour," etc., etc., which are ordinarily brought against politically active workers, are in reality political charges brought for political reasons. Therefore it needs to be emphasised that a knowledge of the legal formalities must be supplemented and fortified by correct political understanding and correct political activity.

The rights available to the subject under the law in Britain have been won, and are largely preserved, only

by the vigilant activity of the masses of the people. It is public attention, therefore, and the publicity attending Courts and police activity, which is the strongest force protecting the worker and helping him to get anything like a " fair deal " when he encounters the administration of the law.

Hence, besides polishing up his own behaviour in court in accordance with the advice in this guide, a worker should never forget the urgent importance of enjoying the sympathetic comradeship of those outside it. His friends and relatives, the accused himself, if he is not in custody, should never fail to enlist the attention of his trade union branch, co-operative guild or other organisation, and this applies, of course, just as much if the accused is a woman. The support and interest of the trades council and other bodies in the locality, district, and even national committee of the union or other organisation of which the accused worker may be a member, publicity in the local or national press, where obtainable, will not only be useful in making magistrates think twice before disposing of a case in summary manner, but will ensure that, in the event of a conviction, the understanding of the political issues involved, and the lessons to be drawn will be widespread to a maximum.

HOW TO DEFEND YOURSELF

Two Rules of Conduct

Before going on to deal with details, it is worth stating two general rules of conduct which must always be borne in mind and observed.

(I) *The first rule is that you should never give the authorities any unnecessary opportunity.*

Thus, identity cards, duly filled in, should always be carried and produced when properly demanded.

Thus, if you are selling a paper or distributing a leaflet, be careful to choose a spot where it seems unlikely that you could cause any obstruction by making it more difficult for people or traffic to pass. Stand in a quiet place, such as outside an empty shop or one closed for the evening. If the police should tell you to move on because the roadway is said to be obstructed, then you ought to do so, without argument —since otherwise you may expose yourself to a charge of "obstructing them in the performance of their duties." You can try, perhaps, to walk up and down in the gutter. Do not thrust your paper or leaflet into the hands of passers-by. Do not shout any provocative slogans. Shout—but not loudly or so as to be a nuisance—the name and price of your paper and, if you wish, some of the headlines, but if you do, make sure that what you say cannot be misunderstood.

Many Courts have recently held that distributing leaflets, either in letter-boxes or to passers-by, is illegal if anyone objects to the political views contained

in the leaflet, and is so annoyed that he is likely to commit a breach of the peace.

This is probably quite wrong, but in war-time Courts will go on coming to equally absurd decisions. Therefore, see that what is said in any leaflet is expressed in moderate language, and, if possible, take several friends with you when you go distributing, so that they can tell the Court if in fact really nobody at all was annoyed.

In some areas, posting up "stickybacks" and chalking the streets are offences under the local bye-laws. Therefore, check up on these before undertaking this form of activity.

Similarly, if you are organising a public meeting, particularly in the open air, you should find out what are the local police regulations with regard to meetings and comply with them. When speaking at a meeting, you must be very careful of your words. Prepare your speech with very full and careful notes where possible, and don't depart from them. Remember that any charge brought will be in respect of a few particular words used and not in respect of the speech as a whole. Your facts should be accurate and your expressions moderate, so as to give no reasonable ground for offence among the audience. Don't become heated or excited or lose control of yourself or your language. Be especially careful in answering questions, which are often not genuine at all, but asked merely in order to trap you. Don't be provoked by heckling into saying the wrong things. What the wrong things are cannot be set out in detail. You must remember that in addition to the ordinary laws of "insulting words and behaviour," there are a

number of wartime Defence Regulations making it an offence to excite disturbance in the public mind.

An added precaution is to arrange for two or three responsible persons to be present and to watch all that happens and is said and, if necessary, to give evidence.

In the case of marches and demonstrations, care must be taken in organising them to comply with local bye-laws and police regulations. Persons taking part in demonstrations should be orderly.

With regard to both meetings and marches, the authorities have certain powers to prohibit them.

There is no emergency law which bans all public meetings, but the Home Secretary (or a Chief Constable) may ban assemblies on grounds of public safety; and the Home Secretary may ban meetings which would be likely to cause serious public disorder or to promote disaffection. The ordinary law is that the authorities cannot stop an indoor meeting, but the proprietor of the hall or room may stop it at any time, even if he has been paid for the use of his premises; and outdoor meetings must not obstruct the road or pavement. As all street meetings do this to some extent, the police really have the possibility of preventing any street meeting. Marches and demonstrations are lawful in the ordinary way; but the Public Order Act and the Defence Regulations give the Home Secretary the right to prohibit processions which would be likely to cause serious public disorder or to promote disaffection. So far, he has prohibited processions only in London.

If you are told that your proposed meeting or march is banned, ask under what authority the ban is purported to be imposed; then look up that authority, if possible in consultation with a lawyer.

But, of course, this rule that you should never give the authorities any unnecessary occasion for complaint does not mean that you should surrender your rights or become humbly submissive. Equally, of course, it is particularly undesirable that any new and arbitrary ban as, for example, of the holding of meetings at a site long utilised for the purpose, should be allowed to pass without the drawing of public attention and an attempt to secure its revocation.

(II) *The second rule follows from the first. If, despite the fact that you have done your utmost to give the police no shadow of an excuse for action, you find yourself accused of some offence or other, then you must preserve your calmness, courage and dignity, whatever the provocation.* The job of the police is to get the most out of you. *Your* job is to give them as little handle that can be used against yourself or anyone else as possible; and this you can do best if you remain calm and firm.

(1) On Being Approached and Questioned by the Police

The first thing, of course, that happens is that a policeman, in uniform or in plain clothes, approaches you and asks you questions.

If he does not know, or makes out that he does not know, who you are, he will first ask you for your name and address or, more probably, to show him your identity card. You should, if asked to do so, immediately produce this or otherwise give satisfactory proof of your identity, as by producing your ration book or other document on which your name and address appears. If you have not got your identity card on you, you can name a police station where you will produce it within two days. If you are asked by a

constable or a member of the armed forces on duty, you should also state the purpose for which you are in the place where you are found, since, if you do not, you may be detained without any charge. However, as regards any other questions put by the police, you must remember that even though you have not yet been arrested or told that you will be arrested, or even cautioned, any answer you may make may be used as evidence against you if you are later accused of anything. Therefore, before you reply, you should ask whether he is going to arrest you, and if so, what for. If his reply is that he is not going to arrest you, but is only making inquiries, you may refuse to make any reply at all, and should ordinarily use your right.[1] If he says he is going to arrest you, then insist on knowing as precisely as possible what for.

(2) On Being Arrested

Before you appear in court, you will either have been arrested or have been summoned to appear.

An arrest is the taking into custody, generally by a police officer, of a person alleged to have committed an offence. An arrest may take place either with or without a warrant. To resist arrest is a crime, even if you do not know that the person arresting you is a police officer. Therefore, if you are being arrested, do not resist. In carrying out an arrest with a warrant, a police officer is justified in breaking open the door of a house, after he has asked to be let in and explained why he has come. A policeman cannot arrest you for your own " protection."

[1] One exception: if you are requested to do so by a proper authority you are bound to give any information in your power relating to an offence, or suspected offence, under the Official Secrets Acts or any information required by a Secretary of State or Admiralty or Postmaster General.

A police officer is entitled to use reasonable force, and no more, in effecting an arrest. He may search the prisoner and take away any property connected with the charge. If he uses more violence than is necessary, you should tell your legal adviser (if you have one) about this and consider making a complaint to the Magistrate when you are brought for trial, but it is not much use doing this if you have no visible injuries or witnesses.

On being arrested, ask your friends who may happen to be present to get the names and addresses of any witnesses.

(3) On Being Charged

On being arrested, with or without a warrant, you will be taken to the nearest police station. On your way, it is inadvisable to say anything at all, however innocent and irrelevant it may appear (and some police officers may deliberately engage in what appears to be innocent chatting). Whatever you say may be used against you or your comrades.

As soon as you are brought to the police station, the police, if they intend to proceed against you, will formally charge you with some offence. (Sometimes, indeed, the police delay this matter, usually because they do not know what to charge you with and want to think about it; occasionally, even, though rarely, you may be released without any charge being brought at all.)[2] When you are charged, you will be cautioned and asked whether you wish to make any answer. Remember that anything you say may be

[2] Under the Defence Regulations, detention without charge is nowadays possible; this matter is dealt with in the concluding section of this guide.

used against you at your trial. Therefore, the best answer you can make is a simple " I am not guilty." Do not, in any event, give any information about your relations with any other person or organisation.

You may be asked to make and sign a written statement. This you can, and ought to, refuse to do until you have had legal advice.

(4) On Being Searched

After arrest and charge, the police may then search you. Strictly, they have a right to do so only if they have reason to suspect that you are carrying something connected with the charge which may be used in evidence against you. In practice, however, they search when they feel like searching, and it is useless for you to protest. This means that you should always exercise the elementary precaution of not carrying about anything which might give the police any information about yourself or anybody else. The emptying of pockets is better than the wringing of hands. Further, the police always take care of your money, and as this may be used to pay a fine, whether you like it or not, you should not go about with too much on you. If any of your property is taken, you should ask for a receipt. Everything must, of course, be returned to you when your case is disposed of. If any property has been taken from you, this fact *must* be reported to the Court, and the Magistrate *must* order its return, if this can be done consistently with the interests of justice.

(5) On Having Your Finger-Prints Taken

Your finger-prints, photograph and measurements may be taken at the police station without your consent if you are charged with any offence against the

Defence Regulations or the Official Secrets Acts. For other offences, the police have no right to take your finger-prints or photograph or measurements without your consent: but if you refuse, they will probably ask for your case to be postponed for a week and object to your having bail, because in prison your finger-prints can be taken, whether you like it or not. Strictly, the magistrate ought not to refuse you bail just because you refuse to have your finger-prints taken, but in practice he often does so.

In prison your finger-prints, measurements and photographs can be taken (by force, if necessary), under an order from the Home Secretary or a justice of the peace, if a police superintendent applies for it and states that there is reason to suppose that you have been previously convicted.

If you are acquitted, all photographs, including the negatives and copies, measurements and finger-prints must be handed over to you by Scotland Yard or destroyed.

(6) On Having Your Home Searched

Whether you have been arrested or not, the police may wish to search your home. This cannot be done unless the police have a search warrant signed by a justice of the peace or a written order signed by a superintendent of police. Recently, however, a practice has grown up of searching the homes of arrested persons without a warrant. The right of the police to do this is very doubtful and has never been tested in Court. Therefore, in the absence of a search warrant or written order, the police have strictly no right to enter your house at all, so that they should be refused admission unless they produce their warrant or order.

You should tell this to your wife or other relative at home, for it often happens that the police come and search premises without having the slightest right to do so. They often choose a time when you are not likely to be in, so that they can impose upon your wife or other relatives. You or your wife or other relative at home should *never consent* to having your home searched.

A search warrant can be granted by a justice of the peace if he is satisfied by information on oath that there is reasonable ground for suspecting that any of the offences under the Defence Regulations (or one of many other offences) has been or is being committed, and that evidence of the commission of the offence is to be found at any premises specified in the information. The police inspector to whom such a search warrant has been granted may within one month from its date enter and search the premises and every person found there, and he may seize any article found in the premises or on any person there, which he has reasonable ground for believing to be evidence of the commission of any of the offences under the Defence Regulations. Instead of such a search warrant, a superintendent of police may, in case of a suspected offence against the Defence Regulations, issue a written order under his hand, if in addition to being satisfied as above, he is further satisfied that it is expedient in the interests of the State that the premises should be searched for the purpose of obtaining the evidence of the commission of the offence and that it is impracticable for reasons of urgency or other good cause to apply for a search warrant.

If the police have such a search warrant or written order, you should not refuse them admission, since

they have the right to use reasonable force to effect their entry. You can do nothing about it, except again to have sufficient foresight not to have any material at your home which could be used against, or which might provide any information about, you or others.

If any property is removed as a result of the search, ask for a receipt, even though, strictly, you may not be entitled to one. If you hear no more about the matter, then, after three months have passed, you should send a letter, asking for the return of the property. If they do not then return it, go to your local police court and ask for a summons against the police under the Police (Property) Act, 1899, for the return of your property.

You may be told when you apply for the return of your property that the Home Secretary has authorised the police to retain it beyond the normal three months. The Home Secretary has power to give such an authorisation if he thinks the material removed by the police may be relevant to making an order for detention without trial under Defence Regulation 18B and if he thinks it " expedient in the interests of public safety " for the police to keep your property.

In that case you cannot get your property back by an application to the police court, but must make your objection to an advisory committee appointed under Regulation 18B. For this purpose it is advisable to secure the services of a lawyer.

(7) On Being Allowed Bail by the Police

If your arrest takes place without a warrant, you must either be brought before the police court within twenty-four hours, or be given bail at the police station by the officer in charge, unless the offence is

"of a serious nature," in which case you must be brought before the court as soon as possible. You should therefore insist on being granted bail[3] by the police, particularly if you have given them your permanent address. You should, however, expect to wait an hour or two while the police make their enquiries. The police may want some person or persons to stand surety for you. If you can, and if bringing in other persons will do neither you nor them harm, you should give the police the names and addresses of the persons, preferably householders, who would be willing to bail you out, and ask the police to get in touch with them at once.

(8) On Being Visited in the Police Station

If the police have decided to detain you in the police cell until your appearance in Court, you have the right to be visited there by your wife or other relative and by a lawyer. Ask for a message to be sent at once to your wife or friends to tell them where you are, and to bring you what you want, such as shaving tackle, a pullover, etc. If you are allowed to use the telephone yourself, be careful what you say, as the police may be listening-in. Just give your name, the charge and the police station. If a lawyer visits you, he may see you alone; but your wife or friend can only see you in the presence of the police.

(9) On Being Summoned

Instead of being arrested, you may receive a summons to appear in the police court on a given day. The summons must be signed by a magistrate, specify

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[3] As to "Bail" and "Sureties," see page 29 for fuller explanation.

an offence, and give you reasonable notice. It can either be served on you personally or left with someone at your usual address. If the summons does not comply with the above requirements, or has not been properly served, you need not go to the Court on the day mentioned (but do not venture to stay away without legal advice). If you do go to Court the case can be heard. The fact that your name is wrongly spelt is not a reason for objecting to the summons as long as you are the person meant. If you do not obey the summons, a warrant will be issued for your arrest, or the case may even (if it is a minor one) be heard in your absence.

(10) On Preparing Your Defence

Whether you are detained in the police Station or released on bail, or summoned, you should, as soon as possible, set about preparing your defence. In all cases this should, if possible, be done with the assistance of a lawyer. You will be able to go through with him all the points you want to make and rehearse your cross-examination and speeches. He will be able to advise you as to whether or not you should give evidence yourself or call any witnesses. He can also probably tell you something of the character and reputation of the magistrate or Bench which is going to try you.

The preparation of your defence, whether with or without a lawyer, requires careful thinking and planning. Go over all the details of the events leading up to the charge. Try to remember, step by step, everything that happened, what was done, what was said, how and when the police came on the scene, and so forth. Make a note of each of the points in your favour and of each of the points of weakness in the

case for the police. Remember, always, that it is the details which are the most important part, because it is details, however apparently unimportant, that may be able to bring to light mistakes, inconsistencies and lies.

If there are any witnesses you wish to call, see that they will be available at the time. If a witness is not willing to come to Court, you should go to the Police Court at 10 o'clock and ask the magistrate for a summons to compel him to attend. You will have to swear that he will not come voluntarily. Remember that a witness can only give evidence as to facts within his own knowledge; he cannot give evidence of what he has been told or of what he surmises or of his opinion (unless he is an expert, *e.g.,* a doctor). Therefore, you should only call a witness who knows the facts of his own knowledge.

In an ordinary case, you should call no more than two or three witnesses to support your case; and therefore, if there are more than two or three witnesses, choose those who are most likely to go down well with the Court, *e.g.,* impartial persons of standing and respectability, who are not personal friends.

Do not treat the preparation of your defence in a spirit of defeatism on the basis that your chances of success are negligible because the charge against you is a political one, and political bias in police and Bench may operate against you.

Finally, remember that it is *your* fight, even if you are going to be represented by a lawyer at the trial. Prepare for it, therefore. See to it that you have every detail clearly and logically in mind.

Sometimes, indeed, you ought to be represented in Court by a lawyer. As a general rule, a lawyer should

be asked to defend you only *if the charge against you is a serious one or if you suffer from some disability such as stammering or deafness, or where the authorities are "trying out" some new legal point as in a "test" case.* Again, if you appeal to a Court of Quarter Sessions, or if you have been committed for trial by a judge and jury, it is often advisable to have a lawyer to defend you. Moreover, if you have been refused bail[4] by a magistrate or justices, either during a remand or pending your appeal or your trial by a judge and jury, it is almost impossible to ask a High Court judge for bail without the help of a lawyer.

You should remember, however, that if a lawyer defends you, his professional position will prevent him putting forward your political defence for you as sharply as you could put it forward yourself; and you, yourself, will not be allowed to make a speech. On the other hand, if the lawyer defending you disobeys your instructions to him, you are entitled to repudiate him and throw him over and conduct your case yourself; but you should not do this unless in the most obvious possible way he is disobeying your instructions so that you are likely to be compromised politically or otherwise. To disavow your lawyer during the case is so difficult to do successfully, and makes, usually, such a bad impression that you should take every care to avoid the occasion arising by coming to an exact understanding with the lawyer beforehand about how the case should be defended. In the main, experience shows it is unwise to arrange with a lawyer who has no political sense, and no readiness or ability through understanding to defend your politics

[4] See "Bail" below, page 29.

as well as the technical charge, to defend a political case.

Unless in such instances as those named above, therefore, you should try to conduct your defence in Court yourself, even though you may feel that you may not do it as well as a lawyer could. Even if you are not very successful, it will have been a valuable political experience for you. But if you preserve your confidence and carefully prepare your case and your "line," with such assistance as a lawyer's advice beforehand, or this guide can give you, there is no reason at all why (except in the special cases named) you should not be quite as good and as effective as a lawyer.

(11) On the Mode of Your Trial

There are two ways of being tried, *viz*:

(i) In the Police Court; or
(ii) By a Judge and Jury.[5]

Police Courts in some of the larger towns are presided over by a paid magistrate, who has been a barrister. In other districts, police courts are presided over by two or more unpaid justices of the peace, who are not lawyers. They depend on their Clerk, who is generally a solicitor and who sits in front of them for the purpose of giving them legal advice. Generally the Clerk conducts the whole case.

[5] A new law has empowered the setting up of Special Courts, consisting of a judge appointed by the Lord Chancellor and two assessors, to try accused in case of special emergency, such as invasion, etc., in place of the usual methods of being tried. So far, no such courts have been set up and no one tried under this law, so that it is not possible to give detailed advice on how to conduct oneself regarding them. If a worker ever *should* find himself charged before such a Special Court and on such special procedure, he should make every possible effort to demand legal advice, that is, to consult a lawyer, and, if possible, one with political understanding.

Trial by Judge and Jury takes place either at an Assize Court, and in London at the Old Bailey, or at a Court of Quarter Sessions. A trial by a Judge and Jury is always preceded by a preliminary hearing in the Police Court, where the evidence is gone into by the magistrate or justices of the peace, who will send the case to be tried at the Assize Court or Old Bailey, or Quarter Sessions, if he or they think that there is sufficient evidence to justify the charge. The more serious cases, such as treason or sedition, can be tried only at an Assize Court.

(12) On Your Right to Trial by Jury

In all cases (except assault) in which, if you are convicted, you may be sentenced to prison for more than three months, you have a right to claim a trial by a judge and jury.

Before such a case starts in the police court, the magistrate or the justices of the peace *must* tell you that you have the choice either to be tried by a judge and jury *or* to be tried in the police court. You will be addressed, generally by the Clerk of the Court, in words to the following effect: " You are charged with an offence in respect of the commission of which you are entitled, if you desire it, instead of being dealt with here and now by the magistrate, to be tried in another Court by a judge and jury. Do you desire to be tried by a jury? "

Sometimes, indeed, you have no choice as to whether you should be tried by a judge and jury or in the police court. Thus, if the prosecuting authorities consider your case to be a serious one, they will themselves ask the magistrate or justices not to try the case,

but to hear the evidence with a view to committing you for trial.

Moreover, in the more serious charges, such as treason and sedition, the magistrate or justices have no power to try you, but *must,* if there is reasonable evidence against you, send you for trial by a judge and jury.

Generally, however, the question of trial by a judge and jury or in the police court is a matter of choice by you. This is one of the important matters, on which in the course of preparing your case, you will have to make a decision.

The advantages of having your trial before a judge and jury are:

(i) You have a longer time in which to prepare your defence.

(ii) Since the proceedings in the police court are only of a preliminary character, you will know before your trial starts what exactly is going to be said against you. You have a right to have a copy of the evidence on payment of three-halfpence per ninety words, and you may inspect it free of charge at the time of the trial.

(iii) The decision as to whether you are guilty or not is left to a jury.

The disadvantages are:

(i) You may have to wait some time, perhaps as long as a month to six weeks, before you can be tried by a judge and jury; whereas in the police court the case will be disposed of at once.

(ii) You may be kept in custody until your trial takes place.

(iii) If you are found guilty in the police court, the maximum sentence of imprisonment that can be passed on you in respect of each offence with which you are charged is six months, whereas on conviction before a judge and jury a longer period may be imposed.

(iv) If you are tried in the police court and are found guilty, you can appeal to a Court of Quarter Sessions, where your case will be entirely *re-heard;* whereas an appeal from the conviction by a judge and jury can be made generally only on a point of law, and only rarely on facts, and is not a re-hearing, but only a reconsideration of the case.

As a general rule, therefore, if the choice is yours, you should ask for the matter to be dealt with in the police court.

(13) On Your Right to a Public Trial

Every case must be heard in open court. This applies to the actual trial. If the magistrates' hearing is simply of a preliminary character prior to committing you for trial, they can conduct it in private. (See "The Police Court as an Investigating Tribunal," page 25.) There is an exception even in the case of the actual trial, however, where the judge or magistrate is satisfied that for reasons of public safety or the defence of the realm "it is expedient" that the public should be excluded either during the whole or part of the proceedings. This means, in practice, that if the prosecution choose to say that the case ought to be heard *in camera, i.e.,* in secret, the court will order this to be done. If such an order is not made, the public have a right to be present insofar as there is room. So far as you are concerned, it will be useful

to have your friends in Court, for their presence will give you encouragement and confidence.

(14) On the Functions of the Police Court

The Police Court has two entirely distinct functions, and the conduct of your defence should accordingly be adapted to the particular function which is in fact being exercised.

(*a*) The Police Court may act as a trial Court. It tries the whole case, *i.e.*, it hears the evidence for the prosecution and for the defence, it gives its decision, and if it finds you guilty, it passes sentence.

(*b*) Alternatively, the Police Court may act merely as an investigatory tribunal. It does not try the whole case; it only determines the preliminary question whether the evidence against you is sufficiently plausible to justify your being tried at all. For this purpose, it hears all the witnesses for the prosecution (you have the right to cross-examine them); and also, if you wish to give your evidence at this stage, your evidence and that of your witnesses. It must then decide whether, taking the whole of the evidence into consideration, a reasonable case has been made out; in other words, it must decide whether the evidence of the prosecution is such that, if it is believed, a jury would be entitled to convict you, or whether it is so inadequate that no jury could or would be entitled to convict you. In the latter case, you have a right to be acquitted. In the former case, the Police Court can only commit you for trial by a judge or jury.

These two difference functions of the Police Court must determine the line of your defence, *i.e.,* the object you must seek to achieve. If the Police Court is acting as a trial Court, you will fight for an acquittal; all your thinking and planning, all your preparations and energies must be concentrated upon the one object of persuading the Court that you are not guilty of the charge brought against you. If, however, the Police Court is acting as an investigatory tribunal, your objects must be (i) to show that the evidence for the prosecution is so flimsy or so inconsistent or so unreliable that no jury would be allowed to or could possibly convict on it; and (ii) to draw out of the prosecution witnesses all the information they are prepared to give in your favour, so that, if you are sent for trial, you will be in a stronger position when you come to prepare your case. (You should remember, however, if you attempt to do this, that while you are yourself extracting information useful to you by your cross-examination, the more you cross-examine, the more you reveal to the prosecution the lines you are likely to adopt in your defence at the subsequent trial. This may be a disadvantage as well as an advantage, therefore, and it may well be wiser, if it appears likely that a plausible seeming case *will* be made out against you and you will be committed for trial, whatever you do, to keep quiet and reserve your defence for the subsequent trial. Whether or no it will be better to do so is one of the things you can usefully discuss with a lawyer, if you have the chance to see one and ask his advice beforehand, even when you are going to conduct the defence yourself.)

These different functions, however, although they determine the lines of your defence, do not affect the

actual procedure in Court, which is subsequently the same in either case.

(15) On the Procedure in Court

It now remains to describe the actual procedure in Court, stage by stage.

There is one preliminary point which is worth mentioning. It is very advisable, if and when you can find the time, and particularly if you have been charged with an offence and have been released on bail, to go to any Police Court and watch the procedure there, to see how the cases are dealt with, and to accustom yourself to the atmosphere and methods of the Court.

(*a*) *On Appearing in the Police Court*

When you come before the Magistrate or Justices, remember first that your appearance and your bearing are very important. Do not appear untidy, but, on the contrary, be as neat in your dress and appearance as possible. Bear yourself with dignity. Do not be overwhelmed by the atmosphere of the Court.

You will find that the Clerk of the Court takes quite a prominent part in the proceedings. Treat him with the respect due to an obviously important official.

(*b*) *On Pleading to the Charge*

As soon as you appear, you will in an appropriate case be informed of your right to be tried by a judge and jury, and you will be asked whether you wish to exercise this right or whether you consent to be tried then and there by the magistrate or justice.

If you choose to be tried in the Police Court, the charge will be read out to you, and you will be asked to say whether or not you are guilty.

Always plead not guilty, even if it is said you have committed some technical offence. Insist on the police proving their case against you, and on presenting your own case to the Court. There is, however, one qualification to this advice. It is *always* best to follow it if you find yourself in a position where it is necessary for you to decide how to plead without having had the chance to consult a lawyer. But there may be cases where the " guilty " plea may in minor cases be an advantage for tactical reasons, which a lawyer could explain to you. Remember, though, that a lawyer without political interest in the case or understanding may be inclined to overestimate the technical factors and underestimate sometimes the importance, for the sake of political integrity, or defending a principle, of putting up a strong and uncompromising defence. So on this point, as on others, if you receive advice of a lawyer, you will pay most attention to it if he is capable of understanding and sympathising with the political issues involved.

In any case, disregard entirely any hints or suggestions which the police may give you that the magistrate or justices like people to plead guilty, or that you will get a lighter sentence if you plead guilty, or that the police will not press the case against you. Such promises are often made, but they are not to be relied on.

(c) On a Remand Being Asked For

Sometimes, even before you are called upon to plead, the police ask for a postponement, which is called a remand; the reason usually given is that they wish to make further enquiries. Their request, as may be imagined, is rarely refused, but you are entitled to object. In such a case, evidence of your ar-

rest only is given and then your case is adjourned, generally for a week, although the period may be up to 21 days, if the case can be tried by a judge and jury.

But the right to ask for a postponement is open to you as well. If for any reason you want one, ask for it *as soon as you are called upon to plead.* The postponement should not be asked for, and certainly will not be granted, unless you have a good reason, such as that you wish to get legal assistance or that a witness of yours cannot come to Court that day.

(*d*) *On Getting Bail During Remand*

If you are under arrest and your case is adjourned either at the request of the police or at your own request, the question of your being released on bail pending the adjournment immediately arises. (If you were in Court, not brought up in custody, but simply arriving to answer a summons, you naturally just leave the Court to return on the date to which the case is adjourned. It has been known, but is extremely unlikely, that in such case you might be arrested on leaving the Court, in which case you would try to get bail as already described for any case of arrest.)

Bail means the release of an arrested person on his promising to forfeit a sum of money, fixed by the Magistrate or Justices, if he does not appear in Court at his trial. Frequently, in addition to his own promise, the arrested person is required to find friends, sometimes one, but usually two, who also promise to forfeit money if he does not appear at his trial. These friends are called "sureties." It is not necessary for the amount fixed to be actually deposited in cash or paid over to anybody; all that is necessary is a *promise* to pay the amount fixed *if* the arrested person does not appear on the date fixed for his trial.

Sureties are usually required to be householders, although this is not essential; and the police will make enquiries to see if they have enough money to make the required promise. The magistrate or justices cannot enquire into the personal character or political opinions of the sureties, but only into their financial standing. This is important, as the police sometimes attempt to object to sureties on the ground of their political views.

In most cases, and certainly in the more serious ones, the magistrate or justices have an option as to whether or not bail should be granted. In deciding this question, the *only* questions that *should* be considered by them are (*a*) whether you are likely to appear at your trial or are likely to abscond; and (*b*) whether, if allowed out on bail, you might attempt to interfere with prosecution witnesses (a thing which in no circumstances you should attempt to do. Even to attempt to communicate with one in any way whatever while out on bail would be unwise). But usually the police are asked what they think and their view generally prevails.

As soon as the adjournment is granted, you must ask for bail. Do not let yourself be whisked away before you can make this request. Offer, if you can and if it becomes necessary, to provide sureties. If the police, on being asked, express no objection to your having bail, you will get it easily. The sum fixed for your bail must not be excessive, so as in effect to be a denial of your bail.

If the police object to your bail, then you must be insistent in your request. Say that far from wishing to avoid your trial by absconding, your one desire is to meet and face the charge against you, of which you

are not guilty. Try and show that the police objection is ill-founded, that you are a respectable person, have a permanent address, and are prepared to provide satisfactory sureties. If the ground of the police objection is their wish to make further enquiries (which is the usual reason), point out that this is not a ground which should be considered, urge that in any event your release on bail will not hamper their enquiries, and undertake, if necessary, that no obstruction will be placed in the way of the police enquiries. Point out, moreover, that your detention in custody will hamper you in the preparation of your defence.

The decision of the Bench on whether you should have bail is not final. You have a right to appeal to a Judge of the High Court, but the procedure is complicated, so that if the occasion arises you or your nearest relative or friend should immediately get into touch with a lawyer to do this on your behalf.

(*e*) *On Being Remanded in Custody*

If the magistrate has refused to grant you bail, you will be remanded in custody, which means that you will go to prison while waiting for your case to be tried.

In prison you will be searched, so that you should remember when you go to Court not to have anything on you which you may not wish the police to see. You are entitled to keep any articles, such as this guide, which were in your possession when you were arrested, unless they are going to be used as evidence in the case or are " incompatible with prison discipline " (*e.g.*, tobacco). You may have food sent in to you, and any books or newspapers that are not considered " objectionable " by the prison governor. You may

have one visit lasting 15 minutes every day, and you may see your legal advisers at any time in the sight but not the hearing of a warder. Writing materials must be supplied to you, but your letters will be censored.

Do not discuss your case with any strangers in prison, whether they are officials or fellow-prisoners.

(*f*) *Opening Speech by Prosecution Lawyer*

After you have pleaded not guilty or when your case is called on the adjourned hearing, the lawyer (if there be one) appearing for the prosecution opens the case in a speech outlining the charge, and describing briefly what is the evidence against you.

This will probably be the first intimation you will get of what the prosecution witnesses are going to say. You must, therefore, follow the opening speech most carefully. Probably some of the things that will be said will be news to you; they may even shock you. Nevertheless, you should not interrupt, as by shouting " that's a lie " or " you liar." This will not impress the magistrate. You will only be told to stop interrupting and that your turn to speak will come presently. Therefore, bide your time; make a note of all the points made in the opening speech, particularly those which you can prove to be untrue.

If necessary, ask for a pencil and paper on which to make your notes.

(*g*) *Evidence-in-Chief by Prosecution Witnesses*

After the opening speech by the prosecution lawyer (if there be one), the prosecution witnesses will be called into the witness-box, one by one, to give evidence against you. He may call any one he

chooses, but if your wife or husband is called, she or he can refuse to give evidence against you.

You should remember that witnesses in most Courts are required to remain outside the Court until called in to give evidence, and to remain in Court afterwards until the end of the case. You should therefore keep an eye on the police witnesses to see that they obey this rule, and should draw the attention of the magistrate to any breach.

The evidence is taken from each of the police witnesses in the form of question and answer, which will be written down by the Clerk. If there be a prosecution lawyer, it is he who puts the questions to the witness; if not, it is the Clerk of the Court who undertakes this task. The magistrate may also ask questions to clear up any point.

At this stage, again, while each witness is giving his evidence, you must pay very careful attention to all that is being said. Make notes, if you can, of the main points of this evidence. Do not comment or interrupt, but remain very attentive.

If, however, a witness attempts to put in a confession, whether written or not, obtained from you, you may object to it, if you were induced to make it by some threat or hope held out by a person in authority, *e.g.*, a police constable. Your objection must be stated before the alleged confession is read or given in evidence. You should explain in detail how you came to be induced, what the threat or hope was, and how but for the inducement you would not have made the confession. But a confession obtained by some underhand means not amounting to an inducement is admissible, although, of course, you should protest about the method employed. A confession im-

plicating another is not evidence against anyone but the person who made it.

Any statement made by you either before or after your arrest, and whether or not in answer to a question put by a police constable, even without a preliminary caution, is admissible in evidence against you. That is why you should maintain profound silence in the presence of the police.

(*h*) *Cross-Examination of Prosecution Witnesses*

After each witness for the prosecution has given evidence, you are entitled to cross-examine him. You will be told of this right either by the Clerk of the Court or by the magistrate. Generally it will be put to you in this form: "Do you wish to ask this witness any questions?" Sometimes it is not put so clearly; and sometimes, indeed, it will be put to you in a confused form, such as: "You will have an opportunity later to state your case, but if you wish to ask this witness any questions you can do so now. But remember you can only ask questions now; you must not make a statement." This is one of your most important tasks, since it gives you the opportunity of attacking the case being made against you, and of presenting your own case.

The purpose of cross-examination is to shake and discredit the evidence which has been given against you, or to show that only half the story has been told, and that the full story is in fact in your favour. Your aims, therefore, are twofold: —

(i) To attack the case for the prosecution.

(ii) To extract the full story which is in your favour, *i.e.*, to put your own case to the witness.

(i) To achieve the first aim, *i.e.,* to attack the evidence of the witness, ask him details about his version of the facts. If his story was false, he may find it difficult or impossible to invent at a moment's notice further details that are plausible. Get each witness to elaborate the details of his story, in case they contradict each other. Bring out by questions to the witness any inconsistencies or improbabilities in his evidence and the contradictions between his evidence and that of another. Ask the witness to explain all these matters. Test everything that has been said; draw attention to the mistakes that have been made.

(ii) The nature of the second aim is obvious. If only half the tale has been told, and that part which would throw an entirely different light on it has been left out, you must endeavour to extract this part from the witness. Put it to him point by point and ask him to agree with what you are suggesting to him. Put that part of your own case which he should know from what he claims to have seen to the witness, point by point and stage by stage, and ask him to agree with your version; and if he will not, ask him to state in what respects he disagrees with you. Show that the ground of his disagreement is unfounded.

Remember that your cross-examination must be conducted in the form of question and answer. You must not at this stage make long statements, and neither should you allow the witness to stray beyond the question and make a long statement himself. Confine him to strict answers. If any of your questions is being evaded, press for an answer. Do not allow the police witnesses to escape answering awkward questions either by remaining silent or evading the question or appealing to the magistrate.

Remember, also, that every part of the evidence in chief of a witness with which you disagree must be challenged by you in cross-examination, otherwise it will be presumed that you accept it. Do not, therefore, let any point escape you.

You will probably be frequently interrupted by the magistrate while you are conducting your cross-examination. Do not be put off by these interruptions. Be politely, but firmly, insistent upon your right to conduct your cross-examination in your own way.[6]

If you have previous convictions against you, be careful how you attack the credit of the witnesses for the prosecution. You should not attack their character, as by showing that they have previous convictions, for by doing so you make it possible for evidence of your own previous convictions to be put in against you.

Watch all the time to see if the Clerk of the Court is writing down answers that you consider important. If he is not, ask that he should do so.

(i) *Re-examination of Prosecution Witnesses*

When there is a prosecution lawyer, he may re-examine a witness, who has been cross-examined by you. The purpose of such re-examination is to clear up or explain away answers to your cross-examination which the prosecution finds awkward because they tell in your favour.

But note that the re-examination must be confined to the matters dealt with in cross-examination; and

[6] But remember, of course, that this right is only to "examine" by *questions*. The magistrate can and will stop you making statements at this stage.

therefore you should object to new matter being introduced in re-examination.

Frequently, also, the magistrate himself asks a number of questions after your cross-examination.

(j) Closing of Case for Prosecution

After all the witnesses for the prosecution have given their evidence and have been cross-examined, and re-examined if necessary, the case for the prosecution is closed.

(k) Submitting No Case to Answer

It happens, but only in rare cases, that after the close of the case for the prosecution, you can argue to the magistrate that no case at all has been made out against you, and that the charge ought therefore to be dismissed; in other words, that the evidence for the prosecution is so flimsy or so contradictory or so shaken or so consistent with either innocence or guilt, that it would be improper or unsafe, or unsatisfactory to convict you.

In such cases, after the close of the case for the prosecution, if you should feel that the evidence for the prosecution is as described above (and probably the magistrate would give an indication whether he thought so too), you should submit that you have no case to answer. If the magistrate rules that your submission is correct, then you are entitled to be discharged there and then. (If you are so discharged, ask for your costs.) If the magistrate does not agree with your submission, then the case proceeds.

(l) On Giving Evidence Yourself

When the Police Court is acting as a trial Court and not as an investigatory tribunal, at the close of the

case for the prosecution you will be addressed by the magistrate to the following effect: "You have heard the case for the prosecution. If you wish to give evidence yourself, you can do so now; or if you prefer it, you can make a statement. If you give evidence, you have to go into the witness-box and give your evidence on oath, and be liable to be cross-examined. If you wish to make a statement, you can do so from where you are. In either case, you may call witnesses on your behalf. Which do you wish to do? "[7]

You will realise, then, that you have a choice either (i) to make a statement from the dock; or (ii) to give evidence on oath in the witness-box.

If you choose to make a statement from the dock, you can give your own version of what happened. This course, however, is generally to be discouraged, because the value attaching to it is small. The reason why such a statement is generally disregarded is that it is not made on oath; and it cannot be tested by cross-examination. (Incidentally, the magistrate may try to ask you questions, even so. You may refuse to answer them.)

It is best to give evidence on oath in the witness-box unless there are questions about your own activities or opinions or those of your associates which you do not wish to answer. It is not unusual for the prosecution, particularly if there is a lawyer appearing for them, to attempt, in the course of the cross-examination, to get from a defendant or his witnesses

[7] The accused can make a speech in his defence at the end, usually, but in some courts, especially provincial ones, this speech has to be made by him at the beginning, before he gives evidence or calls witnesses. Therefore, if your trial is in such a court be on the look-out not to miss this chance. It is dealt with below.

who give evidence on oath, information about his or their activities or political opinions.

As you enter the witness-box, you will be asked to take the oath. You are entitled to affirm instead, if taking the oath is contrary to your religious belief or if you have no religious belief. In that event you should say " I wish to affirm " when you get into the box and before the Bible is handed to you to hold while you repeat the oath, the words of which will be said over for you to follow. Several magistrates are prejudiced against those who affirm, and there is no need to insist on doing so if you consider yourself equally bound to tell the truth by an oath.

If you do go into the witness-box, give your evidence quietly but confidently. Stick to the facts of the case. Bring out every point you want to make in your defence. Avoid any confusion in your story. Be simple, direct, and precise. Do not enter into long arguments, or make long statements. Now and again you will be interrupted by the magistrate or the Clerk of the Court, who will ask you questions. Do not be disturbed, but answer them shortly, and go on.

(*m*) *On Being Cross-Examined*

After you have concluded your evidence, you will then be cross-examined. If there is a prosecution lawyer, he will do so; if not, the magistrate generally assumes this task. In either case, questions will be put to you on the weaker points in your case, inconsistencies, contradictions, matters that are not quite clear. In addition, you must be prepared to deal with questions about your activities generally, and even, perhaps, your opinions or intentions.

Be prepared, therefore, for such cross-examination. Maintain your confidence. Do not appear too clever. Do not fence with your questioner. Reflect on your answers and then give them in a straightforward manner. Do not anticipate the next question. Do not be led to making a wholesale attack upon the injustices of the social system, the partiality of magistrates, the wickedness of the police. It is usually better to suggest, if possible, that the police witnesses are mistaken, rather than to call them liars, even if you think they are. Stick to the facts of the case. If an apparent contradiction in your evidence is put to you, explain it as reasonably as you can.

Remember, especially, that you are entitled to explain anything you say. Do not, therefore, be bullied into giving a simple " yes " or " no " to any question. If you are told to do so by the magistrate, then do so, but immediately explain yourself and state your qualification to the simple answer " yes " or " no."

(*n*) *On Calling Your Witnesses*

After having given your evidence, and been cross-examined, you then go back to the dock. From there, you should proceed to call your witnesses one by one.

When each witness is called, you should ask each his or her name, address and occupation. If the witness is a stranger to you, you should ask him a question that will bring this out, too, in order to show his impartiality. You can then put to each witness questions so as to elicit his story—in much the same way as the prosecution lawyer dealt with his witness. Bring out every point you want from each witness. Do not prompt the witness or suggest the answers to him. Let him state the facts as he knows them in his

own way. Each witness can, of course, be cross-examined, but he is not bound to answer any question which may tend to show that he himself has committed a criminal offence.

After each witness has been cross-examined, you are entitled to re-examine him or her, in order that he or she may have an opportunity to explain anything that is not clear as a result of the cross-examination.

After your re-examination (if any) and the conclusion of the evidence of each witness, you should call the next.

When all your witnesses have been called, your case will then be closed.

(*o*) *On Your Final Speech*

You will now have the opportunity of making a final[8] speech in your defence. The outline of this speech should be prepared carefully. You must be clear and concise. The aim of the speech is to bring out all the points in your favour. To achieve this, you should analyse the charge against you, show that the evidence of the prosecution does not substantiate this charge, point out the inconsistencies and contradictions in this evidence, urge that, because of

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[8] In some police courts, generally in the provinces, your right to make a speech must be exercised *before* you give evidence yourself or call any witness and not *after* your case has been closed. If you are not sure what the practice is in the court in which you appear, at the close of the case for the prosecution enquire whether you can make a speech at the end of your own case. If not, then make your speech before you give evidence yourself or call any witnesses. The lines of this speech should be substantially the same as those indicated in the text here for the closing speech, but, of course, indicating what you *propose to substantiate* by the evidence you are about to give and call, rather than what you *claim to have substantiated,* as in the case of a closing speech made after calling evidence.

them, your evidence and that of your witnesses is preferable to that of the prosecution, and lastly, and in particular, emphasise that if there is any doubt about the evidence, you are entitled to the benefit of the doubt and therefore to be acquitted.

(*p*) *The Benefit of the Doubt*

It is a rule of law that the burden of proof is upon the prosecution to establish beyond any reasonable doubt on the evidence which it calls, that the defendant is guilty of the charge brought against him. If the prosecution does not discharge this burden, then the defendant is entitled to an acquittal. It is not for him to prove his innocence; but for the prosecution to prove his guilt. Therefore, if on the whole of the evidence there exists a reasonable doubt about the guilt of the accused, he is entitled to what is called "the benefit of the doubt," and therefore to an acquittal.

This is a point which you must stress in your final speech, in which you should show why, on the evidence which has been called, there is a doubt as to your guilt, and that, therefore, you should be acquitted.

The prosecution have no right to make a final speech at the end of the case, and if an attempt is made to do so, you should immediately object.

(*q*) *On Sentence*

At the end of your speech, the magistrate will give his decision as to whether he finds you guilty or not guilty.

If you are found not guilty, you will, of course, be discharged. You should then ask for costs, although you may not be likely to get any. If, on the other

hand, the magistrate finds you guilty, he will proceed to pass sentence upon you.

The first thing he will do before actually passing sentence is to hear what the police know of your record and of your character. You can take it that the police will be prepared to state your whole record—and, indeed, your whole past; nothing will be omitted. Sometimes the police give quite a fair and unbiassed account of your record and your associations, but in political cases this fairness is often lacking.

You are entitled, however, to cross-examine the police evidence as to your record and associations in order to show any inaccuracies therein and to bring out the fact of political prejudice on the part of the police.

After listening to the police evidence as to your character, the magistrate will determine the sentence to pass on you. He may either bind you over, or fine you, or send you to prison or inflict both a fine and imprisonment.

(*i*) *On Being Bound Over*

If he binds you over, this means that you will have to enter into recognisances, *i.e.,* undertake to forfeit a sum of money, *e.g.,* £10, if you are not of good behaviour; that is, are convicted of any other offence within a specified time, generally twelve months. In addition, he may require you to find a surety or sureties for your good behaviour during the same period, and the surety or sureties will have to make the same promise as yourself.

You may, of course, refuse to be bound over, in which case you will probably be sent to prison. The disadvantage of being bound over is that your money (as well as that of your sureties, if any) will be for-

feited if you are convicted of another offence within the next twelve months or any longer period that has been fixed; and, in addition, on your subsequent conviction within this period you may be dealt with on the conviction for which you have been bound over.

However, unless the conditions imposed are too onerous or the amounts fixed too heavy, you should generally consent to be bound over.

(ii) On Being Fined

If he fines you, he is bound, before doing so, to take your means into account. On being fined, you should, if you need it, immediately ask for time to pay the fine, and to pay it, if necessary, by instalments. Explain what your work is, what you are earning, whether you have a family, and so forth, and that you cannot pay the fine right away. Generally, you will be given seven or fourteen days to pay. If you find you cannot pay the fine within the time allowed, you can make an application for further time, and you cannot be sent to prison until your means have been investigated.

The following is the scale of imprisonment on failure to pay a fine (counting in here as " fine " also any costs that you may have been ordered to pay): —

Fine not exceeding	*Maximum imprisonment*
10s.	7 days
20s.	14 days
£5	1 month
£20	2 months
over £20	3 months

(iii) On Being Sentenced to Prison

If he sends you to prison, it may be worth while to ask for first division treatment as a political offender. Point out that you are not an ordinary

criminal, and ought not to have to associate with thieves and crooks in prison. But do not be surprised if this request goes unheeded.

(16) On Appealing from the Police Court

If you are found guilty in the Police Court, you may wish to appeal, particularly if the sentence on you, whether by way of a fine or imprisonment, or both, has been too severe.

The appeal from the Police Court is to the local Court or Quarter Sessions. You must send, preferably by registered post, a signed, written notice of appeal (a form for which will be found in the appendix), stating your grounds to the Clerk of the Police Court and to the police within 14 days after you have been convicted, and you will then have to enter recognisances, with or without sureties, in a sum fixed by the Court.

("Recognisances" means that you undertake to forfeit a sum named if, for example, you do not appear at the Sessions when the Appeal comes up, or do not then present your case properly (just as if you were to get bail and then not appear for trial). "Sureties" are undertakings similarly involving a forfeit in case of your non-appearance and made by your friends. Just as in the case of bail, the names and addresses of the proposed sureties must be given to the police and they must show that they are worth (*i.e.*, able to pay in case of forfeit) the sums undertaken as surety. The sureties will have to attend Court to enter into surety, and must do this within 7 days of the Court's acceptance of the appeal.)

Immediately you have given your notice of appeal (which can be written in the cells and given to the

Clerk of the Court immediately after conviction), you should, if you have been sent to prison, ask for bail pending your appeal. Ask the police to let you go straight back to Court so that you can make this request. If the magistrate refuses you bail, you can apply to the High Court.[9]

The Court of Quarter Sessions consists generally of a lawyer as chairman and a number of justices of the peace. The procedure on appeal is in all substantial respects the same as in the Police Court, because the whole case will be heard all over again.

If you appeal against sentence you run the risk of the Court imposing a heavier sentence on you. If, therefore, the sentence of the Police Court is not too heavy, you should appeal only against the conviction.

If you are successful on appeal, you should ask for your costs.

(17) On Being Committed for Trial by a Judge and Jury

When the Police Court is acting as an investigatory tribunal and not as a trial Court, at the close of the case for the prosecution the magistrate or justices must read the charge to you, and explain its nature to you in ordinary language, and inform you that you have the right to call witnesses and, if you so desire, to give evidence on your own behalf. You will then be addressed in the following words or words to the like effect: " Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will

[9] Remember, however (see above, p. 31), that you will need the help of a lawyer to do this, and should ask to see one as soon as possible for the purpose.

be taken down in writing and may be given in evidence upon your trial." You will further be told that you must clearly understand that you have nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of your guilt, but that whatsoever you then say may be given in evidence on your trial, notwithstanding the promise or threat.

After you have been addressed in this way, your wisest course is to say: "I plead not guilty and I reserve my defence." It is only in rare cases, when you have a real chance of persuading the Police Court, which is acting as an investigatory tribunal, that on the basis of evidence you and your witnesses can give, the charge against you should be dismissed and you should not be committed for trial, that you should in fact give evidence yourself and call your witnesses. If the investigatory procedure is adopted, a case when this is worth while will only very rarely occur.

When you are committed for trial, either to the Assize Court or to the Old Bailey in London, or to the Court of Quarter Sessions, you should immediately ask for bail pending your trial. If any objection or difficulty is raised about this, press for bail in the same manner as when the question of bail pending a remand arises. (See above, page 29.)

If the magistrate or justices refuse you bail when committing you for trial, he or they *must* (except in cases of felony) tell you that you have the right to apply to the High Court for bail. In practice, you are not always told of this right. However, High Court judges are more often inclined to grant bail than the local Police Court.

(18) On the Procedure at Your Trial at the Assize Court or the Court of Quarter Sessions

Proceedings at the Assize Court or the Old Bailey or the Court of Quarter Sessions (to whichever you have been committed by the Police Court) are conducted with much pomp and ceremony. Do not, however, let this staging confuse or overwhelm you.

Except in rare cases, the Court will try to evade the real political character of the case and do their best to treat it as an ordinary common crime. You, on the contrary, must keep the political character of the case to the forefront of your defence. Force into the trial the real reason for your arrest. Explain again and again that you are not a criminal, but are vitally concerned with the interest and future of your class, and that the charge has been laid against you because of this.

The actual procedure in the Court is, with certain important variations, much the same as in the Police Court.

As soon as you are brought into the dock, the charge or charges will be read to you, and you will be asked whether you plead guilty or not guilty.

After you have pleaded not guilty, a jury will be impanelled to try you. You have a right to challenge any person serving on the jury if you have good reason to believe that he or she is not impartial or may be politically biassed against you. You must make your objection before that person is sworn as a jury member.

The prosecution lawyer will then make a speech to the jury. When he has finished, he calls his witnesses, and you may cross-examine them as you did

in the Police Court. Question them about any variation from the story they told at the Police Court. The prosecution must not call any witnesses who were not called at the Police Court, or give any further evidence, unless they have supplied you previously with a statement of what the new witnesses are going to say or what the further evidence is.

When the prosecution case is finished, you will be asked if you wish to make a statement or to give evidence yourself or to call witnesses. You may simply address the jury from the dock without giving evidence at all, in which case you cannot be cross-examined. If you give evidence yourself, but do not call any witnesses, you may address the jury after you have given your evidence. If you give evidence yourself and call witnesses, you may make a speech to the jury both before and after you have given evidence and called your witnesses.

If you call witnesses or produce any document as evidence, the prosecuting lawyer will have the right to address the jury after you have done so; but if you alone give evidence, then (unless he is the Attorney-General or Solicitor-General) he must address the jury, if he wishes to do so, before you address them.

(19) On Addressing the Jury

Your address to the jury, particularly your final speech, gives you tremendous scope for making a reasoned appeal to them to view your case in its proper perspective. This speech, therefore, should be carefully prepared. You should not only analyse with great particularity all the evidence which has been given, so as to show that even on that evidence they should not convict you of the charge laid against you; but you should also explain to them why the charge

has been brought, by what sort of biassed and unreliable evidence it has been supported, and what is the *real issue* which they have to try. In a word, bring out the political nature of the case, appeal to them not to become party to the attack upon the democratic rights of the people and the right of the people to organise themselves in the defence of their interests. Remind them, boldly, that they may differ from the judge and are entitled to acquit you, whatever he may say. Urge them to have the courage to do so. Explain that on several historical occasions, *e.g.*, in the case of Lord George Gordon and in the case of Horne Tooke,[10] juries have acquitted prisoners in spite of their obvious technical guilt, and in the teeth of the judge's summing up. Make them realise that their verdict is not only of importance to yourself, but to the whole of the people of Britain, including themselves. And lastly, emphasise that the burden of proof is upon the prosecution to prove your guilt beyond any reasonable doubt and that you are entitled to the benefit of any doubt. Remind them that they must be unanimous, so that if there is a reasonable doubt of your guilt in the mind of any *one* of them, they cannot convict you.

After you or the prosecuting lawyer, whichever is the last, has addressed the jury, the judge will sum up the case, in the course of which he is entitled to, and in political cases does not fail to, express his own opinions to the jury about the charge which has been brought and the evidence which has been called.

The jury will then consider their verdict.

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[10] A politically understanding lawyer will be able to remind you of details of these and other cases if they bear any useful analogy to your own.

If they cannot agree, you will be tried again.

If they acquit you, you will be discharged, but you should remember to ask for costs.

If they find you guilty of felony, you will be asked if you have anything to say why the court should not pass sentence upon you. This gives you a chance to say what you like, but you must be prepared for interruptions if you deal with political issues.

(20) On Appealing from the Assize Court or the Court of Quarter Sessions

You have a further right of appeal to the Court of Criminal Appeal (composed of three High Court judges) on a point of law, and with the Court's permission, on a point of fact. You must make a written application within ten days, and you can get the necessary forms in prison. The most common reasons for appealing are that the judge summed up wrongly, or wrongly allowed evidence to be given, or that there was no evidence to support the jury's verdict. You can also appeal against the length of your sentence, but if you do the Court of Appeal has power to give you a longer one.

If you are in doubt as to whether you should appeal or not, you or your nearest relative or friend should consult a lawyer about this.

If your appeal fails (and it will only succeed if these three judges, or a majority of them, think that there has been a substantial miscarriage of justice) your sentence will only start from the date when the appeal was heard. This may mean an extra four or five weeks in prison.

You have a right to apply for bail until your appeal is heard, but this is very rarely granted.

(21) On Detention Without Trial

Most of the foregoing points equip you to face the procedure concerned in trial under ordinary law, though it has been noted in passing that there is now power, in emergency such as invasion, to try accused by special procedure of which there have as yet been no experience, and in respect of which, therefore, the only useful advice that can be given is to demand contact with a lawyer.

The Defence Regulations to-day, however, also give power to the Home Secretary to order indefinite detention, without trial at all or bringing any charge, of anyone in respect of whom he has "reasonable cause to believe him to be a person of hostile origin or associations or to have been recently concerned in acts prejudicial to the public safety or the defence of the Realm."

An endeavour was made recently on behalf of a person so detained to apply to the Courts for a "Habeas Corpus" order, that is an order to be released unless it can be shown he is lawfully held. It was claimed on behalf of the detained person that his detention must be illegal because the Home Secretary could not possibly, on the facts, have "reasonable cause." On behalf of the Home Secretary, it was stated that he had information from responsible officials, and the application was refused without it being held necessary that the Home Secretary should prove the "reasonableness" of his "cause" by particularising either the nature or source of his information. This shows that the Home Secretary's power is very wide indeed.

The detained person has, under the Regulations, no rights except that he may appeal to an Advisory Com-

mittee (whose decision the Home Secretary is not bound to, but presumably would, accept).

The Home Secretary is supposed to tell the person detained of his right to appeal to this Advisory Committee and must give him an opportunity of writing out his objections to being detained. The chairman of this Advisory Committee must see that the detained person knows why he has been detained.

The knowledge of the allegations against the person detained need not, however, be given to him until three days before he is heard by the Advisory Committee. Further, there is no time limit fixed for the hearing of an appeal.

In the case of detention under this procedure, a prisoner—as soon as he hears that this is the basis of his detention—or his or her near relatives or friends—should immediately get in touch with a lawyer.

The rights of persons under this procedure are so limited, however, and the whole position so obscure, that this is pre-eminently a circumstance in which it should be recalled, as set out in the introduction above, that the best defence for what rights the prisoner does possess, the best means for recovering his liberty, is public attention and sympathy, and particularly directing the attention of the detained person's fellows in his trade union and throughout the working-class and other popular organisations, locally and nationally, to the circumstances of his detention.

APPENDIX

Form of Notice of Appeal to Quarter Sessions

To the Clerk of the Court of Summary Jurisdiction sitting at (1) in the County of

And to (2)

Take Notice that it is my intention to appeal to the next practicable court of quarter sessions for this county against my conviction on the (3)

for having on the (4)

and against the sentence of (5)

then passed upon me.

And Further Take Notice that the general grounds of my appeal are (6)

Dated this (7)

(Signed) (8)

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(1) Town and county where police court sits.
(2) Name of prosecutor.
(3) Date of conviction.
(4) Date, place, and description of offence.
(5) Sentence.
(6) Grounds of appeal. Insert any others which occur to you.
(7) Date of notice of appeal.
(8) Your signature.

Note: This is a form of appeal against both conviction and sentence; if you only intend to appeal against one or the other, cross out the appropriate part. Do not appeal against sentence, if it is not a severe one, because to do so gives the appeal court power to increase it.

The form must be copied out twice; one copy for the clerk and one for the prosecutor, and given to them within 14 days of the date of conviction. It is as well, also, to keep a third copy yourself.